

# Washington legislators didn't pass new drug possession laws in time. What happens now?

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Washington's domed Legislative Building, finished in 1928, and the nearby Temple of Justice reflected in the Capitol Lake on a calm day. (By Jim Camden/For The Spokesman-Review / For The Spokesman-Review) [Buy this photo](#)

**By Jim Camden and Elena Perry**The Spokesman-Review

Here are answers to some of the common questions that might arise after the Legislature failed to pass a law clarifying certain drug possession laws in Washington.

## **What were the laws that the state Supreme Court ruled unconstitutional?**

Under the 2021 decision in *State v. Blake*, the court ruled the state's felony drug possession statutes did not require prosecutors to prove criminal intent on the part of a defendant, which the court said violated his or her due process rights. Those laws were struck down.

## **What is the law now?**

In response to the Blake decision, the Legislature passed a new law that made possession of relatively small amounts of illegal drugs a misdemeanor, punishable by a fine of as much as \$1,000 or 90 days in jail, or both. But it also required defendants to be diverted into assessment and treatment for the first two arrests, and allowed them to be sent to treatment on subsequent arrests. That prompted critics, including leaders in law enforcement, to say that drug defendants could be repeatedly sent to treatment that isn't working and never face the consequences of their crime.

### **What will happen if the Legislature doesn't pass a new possession law?**

The law the Legislature passed was a temporary fix so lawmakers would have time to come up with a long-term solution for a balance of appropriate punishment and money for treatment programs and facilities. It expires on July 1. If the Legislature doesn't act by then, those state laws on drug possession come off the books.

### **Can cities and counties create their own drug possession laws, and, if so, could they require treatment?**

They can, and some local officials said they would prefer to write their own. They also could, but would not be required to, have treatment options. If they do have treatment options, they could be more limited than what the Legislature was considering. That could result in a patchwork of drug possession laws across the state where punishment and treatment requirements could differ simply by going across a city or county boundary.

### **The new state budget passed by the Legislature assumed that the Legislature would approve a possession law that would call for more drug treatment programs. Since lawmakers didn't pass the Blake decision fix, could cities and counties tap that money for their own possession laws?**

The operating budget has \$141 million to expand substance use disorder treatment while the capital budget has \$211 million for drug abuse and behavioral health. Only a small percentage is tied to a Blake fix, so local jurisdictions would have access to state money to help pay for drug treatment efforts. The money is limited and will likely be competitive, Republican leadership said. Local courts may not have existing infrastructure to implement pretrial substance use treatment programs.

Former House Republican Leader J.T. Wilcox, R-Yelm, said that means local control may not be the best case, but also not the worst. It would, however, give local governments some tough choices, he added.

### **Gov. Jay Inslee has said he would call a special session in hopes of passing a drug possession law. When could that happen? And how would that work?**

A governor can call a special session and set a date for it to start whenever the Legislature is not meeting. Lawmakers would return to Olympia for as many as 30 days, although they don't have to stay that long.

Inslee wants a special session focused on a fix to the Blake decision and said he would call it. But a governor can't limit the session, and legislators can take up any issue they want within the 30 days. The closing days of the session also showed that getting a compromise that could pass both chambers is difficult because the House rejected the bill the Senate passed with bipartisan support, and the Senate rejected the House's replacement bill. The potential compromise worked out by a select group of Senate and House members failed Sunday in the closing hours of the session's last day, and a brief attempt to craft a new proposal fell flat.